MUNIANDY RENGASAMY & ORS.

v.

INDO (M) ENGINEERING CO. BHD. (IN RECEIVERSHIP)

HIGH COURT MALAYA, KUALA LUMPUR
ANUAR ZAINAL ABIDIN J
[ORIGINATING SUMMONS NO. D1-31-33-87]
4 JANUARY 1990

LABOUR LAW: *Termination of services - By receiver - Complaint lodged with Commissioner for Labour - Section 69 of the Employment Act - Compensation payable thereunder - Contrast with s. 292(1)(c) of the Companies Act 1965.*

COMPANY LAW: *Assets of company - Ranking of debts - Whether termination benefits rank in priority over debenture holders - Section 292(1)(c) of the Companies Act - Contrast with s. 69 of the Employment Act 1955.*

The plaintiffs were the employees of the defendant company, who were in receivership. The receivers terminated the services of the plaintiff on 11 July 1986. The plaintiffs lodged a complaint to the Commissioner for Labour under s. 69 of the Employment Act 1955 against the defendant company for non-payment of termination benefits, pro-rata bonus, leave pay and indemnity in lieu of notice. After an inquiry the Commissioner for Labour ordered the defendant company to pay the plaintiffs the sum of RM1,778,795.79 being pro-rata bonus, termination benefits, leave pay and indemnity in lieu of notice.

The question was whether the plaintiffs' claim ranks in priority over the debenture holders.

Held:

[1] Compensation payable under s. 69 of the Employment Act 1955 is a worker's compensation as provided under s. 292(1)(c) of the Companies Act 1965.

[2] The compensation payable to the plaintiffs ranks prior to the debenture holders.

[Application as in prayer (a) allowed with costs.]

Legislation referred to:
Companies Act 1965, ss. 191, 292(1), 292(1)(a), 292(1)(c), 292(3), (5)
Employment Act 1955, s. 69

JUDGMENT

Anuar Zainal Abidin J:

This is an application (Encl. 1) by the plaintiffs by way of originating summons for an order for:

(a) A declaration that, subject to s. 191 read with s. 292(1)(a) of the Companies Act 1965 all amounts due to the plaintiffs from Indo Malaysia Engineering Company Bhd., being pro rata bonus, termination benefits, leave pay and indemnity in lieu of notice amounting to RM1,778,795.79, ranks prior to the debenture holders.

(b) In the alternative a declaration that the order made on 4 September 1986 by the Commissioner for Labour, Port Klang ordering Indo Malaysia Engineering Company Bhd., to pay the plaintiffs a sum of RM1,778,795.79 being pro rata bonus, termination benefits, leave pay and indemnity *in lieu* of notice, ranks prior to the debenture holders subject to s. 191 read with s. 292(1)(a) of the Companies Act 1965.

The plaintiffs were the employees of the defendant company.

On 11 July 1986 the United Asian Bank Bhd., appointed Mr. Chua Teong Hooi and Raja Arshad bin Raja Tun Uda as receivers of the defendant company.

The receivers terminated the services of the plaintiff on 11 July 1986. The plaintiffs lodged a complaint to the Commissioner for Labour under s. 69 of the Employment Act 1955 against the defendant company for non-payment of termination benefits, pro-rata bonus, leave pay and indemnity in lieu of notice. After an inquiry the Commissioner for Labour ordered the defendant company to pay the plaintiffs the sum of RM1,778,795.79 being pro-rata bonus, termination benefits, leave pay and indemnity in lieu of notice.

In the ranking of certain debts, to be paid out of the assets of the defendant company, the Companies Act 1965 is silent as to the position of the order made by the Commissioner for Labour. The question for determination here is whether the plaintiffs' claim ranks in priority over the debenture holders.

Under s. 191 of the Companies Act 1965, it is provided that in the case where a receiver is appointed on behalf of the holders of any debenture of a company secured by a floating charge, debts which are preferential debts under s. 292(3) or (5) in a winding-up shall have priority over any claim for principal or interest in respect of the debentures and shall be paid out in the same priority as is prescribed in s. 292(3) or (5) of the Companies Act 1965.

The plaintiffs' claim in my view, falls under para. (c) of s. 292(1) of the Companies Act 1965. Under s. 292(1)(c) of the Act it is provided that all amounts due in respect of worker's compensation accrued before the commencement of the winding-up shall be paid in priority to other unsecured debts. In relation to s. 191 of the Act such amount shall be paid in priority to debts to the debenture holders.

The question here is whether the termination benefits, pro rata bonus, leave pay and indemnity in lieu of notice are worker's compensation as provided under s. 292(1)(c) of the Companies Act 1965.

The words used under para. (c) of s. 292(1) is general and capable of wide interpretation. It provides for "worker's compensation under any written law relating to worker's compensation." It does not refer to any particular Act. It does not for instance specifically refer to the Workmen's Compensation Act 1952. In my view it leaves sufficient scope to include compensation under any other written law. In my view compensation under s. 69 of the Employment Act 1955 falls within the meaning of s. 292(1)(c) of the Companies Act 1965.

For the reason above I would agree with the plaintiffs that the amount due to the plaintiffs from Indo Malaysia Engineering Co. Bhd., ranks prior to the debenture holders.

I would therefore allow the plaintiffs' application as in prayer (a) with costs.

Also found at [1990] 1 CLJ 797